

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ORTEGA, individually and on behalf of all others similarly situated,

Plaintiff,

V.

KELLER WILLIAMS REALTY, INC.,
and KWWD, LLC

Defendants.

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Case No. SA-24-CV-00332-XR

**DEFENDANTS' MOTION TO DISMISS
OR STRIKE CLASS ALLEGATIONS AND CLAIMS**

Defendant KWWD, LLC requests this Court enter an order dismissing Plaintiff's class claims in his First Amended Class Action Complaint, ECF No. 12, with prejudice, or in the alternative strike or dismiss Plaintiff's class allegations and claims. In support of this motion, Defendant states as follows:

1. On June 26, 2024, Plaintiff filed his First Amended Class Action Complaint. ECF No. 12. On August 26, 2024, Defendant KWWD, LLC filed its Motion to Dismiss same, ECF No. 20. That motion remains pending and addresses all claims alleged in the petition.

2. On October 24, 2024, this Court granted Plaintiff's counsel's motion to withdraw from representation of Plaintiff, ECF Text Order 10/24/24. On November 1, the Court ordered Plaintiff to notify the Court whether he intended to proceed pro se or obtain new counsel. The Court also ordered Plaintiff to move to

voluntarily dismiss his case if he did not intend to proceed, giving him a deadline of December 2, 2024 to comply. ECF Text Order 11/01/24. On November 22, Defendants were served Plaintiff's Notice of Intent to Proceed Pro Se and Correction of Address, ECF No. 34. This Notice states Plaintiff's intent to proceed pro se on his "individual claims," but is silent concerning the class allegations. *Id.* The Court's December 2 deadline has come and gone, and Plaintiff has thus not complied with the Order of this Court to dismiss claims he does not intend to pursue. This motion to dismiss or strike Plaintiff's class allegations and claims is filed within 21 days of the Court's deadline.

3. Federal Rule of Civil Procedure 12(f) authorizes this Court to strike immaterial matters, and Rule 12(b)(6) authorizes the court to dismiss a case for failure to state a claim on which relief can be granted.

4. A pro se litigant cannot adequately represent the interests of a putative class or appear as class representatives. They must be represented by qualified counsel. Dismissal of the class action allegations for failure to state a claim is a proper remedy in this situation, as is striking the allegations supporting class claims. *Koym v. Fry's Electronics*, 2009 WL 1883763 at *11 (W.D. Tex. 2009) (collecting cases).

5. Defendant also requests the dismissal be with prejudice due in part to Plaintiff's failure to comply with this Court's order to dismiss claims he no longer intends to pursue. Allowing the improper class allegations and claims to remain live prejudices and harms Defendant due to the rule tolling limitations when a

petition on behalf of a proposed class is filled. *Collins v. Village of Palestine, Ill*, 875 F.3d 839, 840 (7th Cir. 2017). Dismissing the class claims stops the tolling and reduces the undue harm and prejudice.

6. Defendant prays that this Court grant this motion, dismiss Plaintiff's class allegations and claims with prejudice, or in the alternative strike or dismiss the claims without prejudice. Defendant further requests any other relief to which it has shown itself to be legally or equitably entitled.

Date: December 19, 2024

Respectfully submitted,

/s/ Kelly P. Rogers

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**ATTORNEYS FOR DEFENDANT
KWWD, LLC**

CERTIFICATE OF SERVICE

A true and correct copy of this document was served on December 19, 2024
Via CM/ECF System as follows:

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